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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

LEWIS, RALPH A

ART UNIT PAPER NUMBER

3732

DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/089,102

Applicant(s)

SETHI ET AL.

Examiner

Ralph A. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 10-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

**Rejections based on 35 U.S.C. 112, second paragraph**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 10 and 16, the "templates provided in a range of angles" limitation is confusing. No structure for the template has been set forth that presents the claimed angles. Insufficient structure has been set forth so as to provide a logical basis for the angle limitation. In line 12, the "determining which abutment to use" limitation is unclear and confusing as only a single "an abutment" has been set forth in the claim.

In claim 12, it is unclear how the "extension piece" relates to the previously claimed "free-end of the lug." Moreover, the "extension piece" limitation appears to contradict the "free-end" limitation; according to the specification extension piece extends from the end of the "frusto-cone" - thus the end of the cone is not a "free-end" as it has been claimed.

In claim 13, line 3, there is no antecedent basis for "the template bore."

In claim 15, it is unclear how a shaft is able to "mimic the angle." It is the angular relationship between the shaft and the lug which provides for the angles.

### **Rejections based on Prior Art**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harding et al ((US 5,538,426).

The present claims fail to make any distinction between the claimed abutment and the claimed plurality of templates. Accordingly the present claims fail to distinguish the claimed invention from the prior art where a plurality of different angled abutments are provided and used as templates in selecting the abutment which is to be used. More particularly, Harding discloses an implant 24, an abutment 28 (Figures 9 and 12) which is selected for use, and a series of abutments formed at different angles which are used as templates for determining the properly angled abutment (column 10, 1-5). Harding fails disclose the particularly claimed numerical range of angles for the series of abutments that are used as templates, however, one of ordinary skill in the art would have found the selection of angles within the claimed range obvious as a matter of routine.

In regard to claim 11, note the upper portion of groove 3 which is frustoconical shaped. The portion which extends below the upper portion of the groove meets the

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"extension piece" limitation of claim 12. In regard to claims 13 and 14 note the driving flats 32.

Applicant is encouraged to clearly set forth in the claims a set of templates having angled structures and a set of abutments having angled structures, as well as, structural distinctions between a "template" and an "abutment."


### **Prior Art**

Applicant's information disclosure statement of 19 April 2002 has been considered and an initialed copy enclosed herewith.

Linkow et al (US 4,842,518), Sulc (5,195,891), DeBuck (5,350,301), Siegmund (5,571,015), Blacklock et al (5,695,334), Day et al (5,876,204), and Spalten (6,273,720) are made of record

Any inquiry concerning this communication should be directed to Ralph Lewis at telephone number (703) 308-0770. Fax (703) 872-9306. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Kevin Shaver, can be reached at (703) 308-2582.

R.Lewis  
February 20, 2004

  
Ralph A. Lewis  
Primary Examiner  
Au3732